

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Petition of the
Minnesota Pipe Trades Association for a
Declaration that the Interim Approval for
Air Admittance Valves Issued by the
Commissioner of the Minnesota
Department of Health Is An Unadopted
Rule.

FIRST PREHEARING ORDER

On July 8, 2005, the Minnesota Pipe Trades Association (MPTA) filed a Petition for an Order Directing the Minnesota Department of Labor and Industry to Cease Enforcement of an Unadopted Rule. The Petition was filed under Minn. Stat. § 14.381. It concerns a document entitled "Interim Approval for Air Admittance Valve as an Alternate Fixture, Appurtenance, Material or Method" (Interim Approval). The Interim Approval was mailed to Studor, Incorporated, (Studor) on October 8, 2004. Studor is the North American distributor of an air admittance valve (AAV). Petitioner seeks a declaration that the Interim Approval constitutes an unadopted rule that the Minnesota Department of Labor and Industry (DLI) is attempting to enforce. Petitioner requests that the Administrative Law Judge order DLI to cease enforcement of the Interim Approval.

On July 22, 2005, the Administrative Law Judge wrote counsel for Studor inviting Studor to file a response to the Petition.

On July 22, 2005, DLI filed a response to the Petition.

On July 27, 2005, Studor filed a Petition to Intervene. Copies were served upon counsel for the MPTA and DLI. No objections to the intervention have been filed.

On August 1, 2005, the Administrative Law Judge notified the parties by email that oral argument on the Petition would be held September 29, 2005, and that all parties may file reply briefs by September 22, 2005.

On August 12, 2005, Studor filed a response to the Petition.

On August 23, 2005, the International Association of Plumbing and Mechanical Officials (IAPMO) filed a letter requesting permission to intervene. There is no indication that the letter was served on existing parties.

The MPTA is represented by Frank Vogl, David H. Johnson, and Edward P. Sheu, Best & Flanagan LLP, 225 South Sixth St, Suite 4000, Minneapolis, MN 55402-4690.

The DLI is represented by Jocelyn F. Olson, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota St, St. Paul, MN 55101-2130.

Studor is represented by Gary A. Van Cleve, Larkin, Hoffman, Daly & Lindgren, Ltd., 1500 Wells Fargo Plaza, 7900 Xerxes Ave. S., Minneapolis, MN 55431-1194.

The IAPMO is represented by Thomas LeClair, Senior Plumbing Inspector, Office of License, Inspections and Environmental Protection, 8 East 4th St, Suite 200, St. Paul, MN 55101.

Based upon the record and for reasons set forth in the following Memorandum, the Administrative Law Judge makes the following:

ORDER

1. Studor's Petition to Intervene is **GRANTED**.
2. The IAPMO's request to intervene is **GRANTED** as follows. The IAPMO may file a response to the Petition no later than September 7, 2005. The response must be signed by an attorney. The IAPMO may appear at oral argument only by counsel.
3. All parties except IAPMO may file reply briefs by September 22, 2005.
4. Oral argument on the Petition will be held September 29, 2005, at 9:30 a.m. at the Office of Administrative Hearings.

Dated this 25th day of August, 2005

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

Whether AAVs provide adequate protection to the public, constitute a suitable substitute for open pipe venting, or are otherwise a good idea are not significant issues in this hearing. The primary issue in this matter is whether the Interim Approval is a "rule" under Minnesota's Administrative Procedure Act.

Studor is the North American distributor of AAVs. It has sought approval for its product throughout its region. The Interim Approval allows it to sell its product in

Minnesota. Studor will be directly and very significantly affected by the outcome of this proceeding. Therefore, Studor should be allowed to participate as a party.

According to his letter, Mr. LeClair, a Senior Plumbing Inspector for St. Paul, is a member of IAMPO, has been a member of the Minnesota Plumbing Code Advisory Council for ten years, and has represented IAMPO on the Advisory Council for a few years. He states the Advisory Council opposed amending the Plumbing Code to allow AAVs. He then states that because of IAMPO's "business in the plumbing industry and our involvement in the Advisory Council, IAMPO is directly and adversely affected by the Interim Approval."

If the IAMPO is a public interest advisory body, as one would expect inspectors and building officials to be, it is difficult to see how the IAMPO is affected at all by the Interim Approval. What Mr. LeClair is expressing is a disagreement with the wisdom of allowing AAVs to be used, which he wrongfully assumes will be the primary issue in this proceeding. So it is tempting to dismiss the IAMPO's request for intervention entirely. However, the MPTA Petition and Studor Response spend extensive time describing and discussing the merits of AAVs and decisions by other jurisdictions. A basic understanding of AAVs and their use is necessary to understand the dispute here and little harm will be caused by allowing the IAMPO to provide a perhaps somewhat different view. Therefore, IAMPO will be admitted as a party and may file a response and appear at oral argument. However, because this is a case involving legal arguments on a narrow issue of administrative law, not a public hearing to take comment on the merits of AAVs, IAMPO must appear by counsel.

S.M.M.